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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/539,908

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Andreas Ackermann

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6545

80711

7590

01/15/2009

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EXAMINER

MCGUTHRY BANKS, TIMA MICHELE

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

01/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/539,908	<b>Applicant(s)</b> ACKERMANN ET AL.	
	<b>Examiner</b> TIMA M. MCGUTHRY-BANKS	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10 and 12-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,10,11,13,14,16 and 17 is/are allowed.
- 6) ☒ Claim(s) 2-6,9,12,15 and 18-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/9/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Status of Claims***

Claims 1-7, 9, 10, 12, 14-17, 19 and 21-31 are as previously presented, Claims 8 and 11 are cancelled and Claims 13, 18 and 20 are as currently amended.

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 9 October 2008 was filed after the mailing date of the non-final rejection on 28 August 2008. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-7, 9, 15 and 18-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 2 recites the limitation "the granules" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "the granules" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the granules" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the granules" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the granules" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "the granules" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 9, 15, 18 and 27 have improper Markush groups in that they recite "the group including." This is improper because the group is not closed, i.e. the group could potentially include other things as well. Generally Markush groups should recite "selected from the group consisting of" or similar language that closes the group.

Claim 12 recites the limitation "the granules" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Applicant has amended Claim 13 to recite a material which "can be" dewatered. I would advise amending this to read "is capable of being" dewatered.

Claim 18 recites the limitation "the desired grain size" in lines 11 and 12. There is insufficient antecedent basis for this limitation in the claim.

***Allowable Subject Matter***

Claims 1, 10, 11, 13, 14, 16 and 17 are allowed.

Claims 2-7, 9, 12 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 18-31 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: Daussan et al, cited in the previous office action, teaches a porous product for the insulation, production or processing of metal baths. Breault et al, cited in previous office action, teaches preparing sintered calcium aluminates as protective cover for liquid metals. However, neither Daussan et al nor Breault et al teach products with the claimed porosity. Additionally, though Daussan et al and Breault et al teach adding water, neither Daussan et al nor Breault et al teach one or more of a foaming agent, an expanding agent and a foam as in Claim 18.

Regarding the search report that was filed in the IDS filed 9 October 2008, DE 19728368 does not teach CaO and Al<sub>2</sub>O<sub>3</sub>, the publication by K. Schwerdtfeger does not teach porosity or one or more of a foaming agent, an expanding agent and a foam, JP 01237049 does not each porosity or one or more of a foaming agent, an expanding agent and a foam, DE 3742415 does not teach CaO and Al<sub>2</sub>O<sub>3</sub> but olivine, which is a type of magnesium iron silicate and DE 3727619 teaches using magnesite and not CaO and Al<sub>2</sub>O<sub>3</sub>.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMA M. MCGUTHRY-BANKS whose telephone number is (571)272-2744. The examiner can normally be reached on M-F 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy King/  
Supervisory Patent Examiner, Art Unit  
1793

/T. M. M./  
Examiner, Art Unit 1793  
15 January 2009